

# Privacy + Security Forum

**Session:**

**From IR Data Review to Defense**

**How Notification Strategy Shapes Legal  
Outcomes**

## Speakers



**Matt Liebner**  
Vice President of  
Sales  
Assessment First

---

**Moderator**



**Kate Hanniford**  
Partner  
Alston & Bird



**Jamie Elbert**  
Attorney  
ZwillGen



**Andrew Nauer**  
Vice President of  
Operations  
Assessment First

# IR Data Review and Why It Matters

## Investigation of Impacted Data

- PII and PHI, contractual, commercial, and sensitive data
- Drives notification obligations, response timelines, and regulatory compliance
- Establishes foundation for assessing risk and defensible response

## Legal and Business Risk

- Expanding state and sector-specific regulatory enforcement
- High likelihood of B2B and class action litigation
- Reputational harm and business loss

## Balancing Speed, Accuracy, and Cost

- Immense pressure to move quickly
- Clarity grounded in accurate data extraction
- Review costs can be 7 figures and just the tip of total legal spend

# Current Regulatory and Litigation Landscape

## State AGs

- Increasingly Active and Coordinated (CA, TX, NY, MA, IN, FL, NC, WA, IL, CO, NJ, CT)
- Consortium of State Privacy Regulators
- CCPA and Dedicated Privacy Enforcement Units
- State Industry Regulators (Finance, Insurance, etc.)

## U.S. and International Regulators and Frameworks

- Rising Disclosure, Accountability, and Enforcement Pressure
- HHS -OCR, SEC, FTC, EU-DPAs, ICO, OPC
- HIPAA, GLBA, FERPA, GDPR, PIPEDA

## Litigation is Likely

- Data Breach Class Actions
  - Related to Privacy Exposure and Alleged Harm
- B2B Litigation
  - Contract Driven
  - Supply Chain and Vendor Incidents

# Scoping and Review Protocol

## What's In Scope?

- Forensic findings directly inform review universe
  - Accessed vs. exfiltrated
  - Threat actor file tree
  - Mailbox sync vs. logs
- Payment for suppression, leaked, or published data

## Align Review with Legal Notice Triggers

- State PII, HIPAA, GLBA, FERPA, GDPR, PIPEDA obligations
- Map specific PII/PHI data elements and review tags that directly translate into notification decisions
- Limit reviewer subjectivity and discretion for efficiency and normalized results

## Contractual and Business Sensitive Data

- Separate workflow from PII/PHI and more like litigation document review
- Client input for defining scope is challenging but essential
- More opportunity for AI and technology enhanced efficiencies

# Incident Response vs Traditional eDiscovery

## Legal Lens

- Goal is to understand data impact and legal obligations, not issue spotting or response to discovery requests
- Reasonable Effort is the standard, not procedural compliance
- Privilege is strategic in real time, not backward looking

## Vendor Challenges

- Datasets can be massive, disparate, and unstructured
- AI is powerful for initial prioritization, scoping, and workflow optimization, but lacks precision in extraction.
- Requires scaling technology and review teams in hours/days, not weeks
- Data extraction is akin privilege review, but more labor intensive

## Deliverables and Output

- Triage analysis and iterative reporting inform scope refinement
- Phased document sampling is critical
- Final output is an excel with individuals' names, data elements, and categories of exposures, not rolling document productions

# Reporting and Notice Strategy as Risk Mitigation

## Speed + Defensibility

- Demonstrate and document a posture of urgency and compliance
- Notify as early as reasonably possible with documented decision-making
- Regulators are more forgiving of incomplete early notice than delayed, fully polished notice without justification

## Consistency is Key

- Align forensic findings, data artifacts, and legal analysis with individual notices and regulatory disclosures
- Contradictions are what enforcement actions and plaintiff attorneys exploit first
- Privilege, materiality, and multi-jurisdiction coordination

## Calibrated Transparency

- Be clear without speculating or overstating impact
- Over-disclosure fuels class actions, under-disclosure invites claims of deception
- The goal is precise, supportable language grounded in verified facts

# Parting Wisdom For Better Outcomes

## No One-Size-Fits-All Approach

- Understand unique legal, operational, and reputational dynamics
- Response strategies must be tailored to incident-specific data and risk
- Process is important but flexibility is a strength

## Managing Expectations

- Early and often alignment between legal, client, and data review team
- Clearly define scope to inform transparency in budget and timing
- Document methodology and scope decisions as you go, not after

## Accuracy Matters

- Rapid response is essential, but accuracy shapes defensibility
- Notification decisions should be informed, not rushed
- Data review quality directly impacts legal exposure

## Stay in touch: Continue the conversation with us

**Matthew Liebner**

Assessment First

[Liebner.M@AssessmentFirst.com](mailto:Liebner.M@AssessmentFirst.com)

(215) 422-2774

**Kate Hanniford**

Alston & Bird

[Kate.Hanniford@Alston.com](mailto:Kate.Hanniford@Alston.com)

(202) 239-3725

**Jamie Elbert**

ZwillGen

[Jamie.Elbert@ZwillGen.com](mailto:Jamie.Elbert@ZwillGen.com)

(202) 706-5257

**Andrew Nauer**

Assessment First

[Nauer.A@AssessmentFirst.com](mailto:Nauer.A@AssessmentFirst.com)

(540) 272-4134